

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<p>Oak Harbor Freight Lines, Inc., Petitioner, v. National Labor Relations Board, Respondent and Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, 962 and Teamsters Local 174, Intervenor for Respondent.</p>	Case Number: 14-1226
<p>Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, 962 and Teamsters Local 174, Petitioners, v. National Labor Relations Board, Respondent and Oak Harbor Freight Lines, Inc., Intervenor.</p>	Case Number 14-1273

**OAK HARBOR FREIGHT LINES' MOTION
TO EXTEND BRIEFING DEADLINES - 1**

National Labor Relations Board, Petitioner, v. Oak Harbor Freight Lines, Inc.,	Case Number: 15-1002
	Respondent.

**OAK HARBOR FREIGHT LINES, INC.'s MOTION TO EXTEND
BRIEFING DEADLINES**

Pursuant to Rules 26(b) and 27, Fed. R. App. P., and D.C. Circuit Rules 27 and 28(e), Oak Harbor Freight Lines (“OHFL”), hereby respectfully requests that the Court extend the briefing deadlines in this consolidated proceeding, as set forth below. Counsel for OHFL has contacted counsel for the National Labor Relations Board (the “Board”) and the Teamsters Union Locals 174 et al. (the “Unions”) for their positions regarding this Motion. The Unions take a position neither in support of nor in opposition to this Motion. The Board is agreeable to a postponement in the briefing deadlines of 60 days. The Board does not agree to a longer postponement as a matter of institutional policy. The basis for this Motion is set forth below.

1. On January 27, 2015, the Court issued an Order in the above-consolidated proceedings directing the parties to submit a joint briefing proposal,

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including proposed deadlines and lengths of briefs. (D.C. Cir. Case No. 14-1226, Doc. No. 1534265.)

2. On February 26, 2015, the parties filed a joint proposed briefing schedule. (D.C. Cir. Case No. 14-1226, Doc. No. 1539771.) The parties' joint proposed briefing schedule identified the briefs to be filed by the three parties to these consolidated proceedings, the proposed length of the briefs, and a timeline for completing the briefing in these consolidated proceedings. (*Id.*)

3. On May 22, 2015, the Court issued a briefing schedule in these consolidated proceedings. (D.C. Cir. Case No. 14-1226, Doc. No. 1553770.)

4. Selena C. Smith, Counsel for OHFL, is the attorney responsible for drafting OHFL's briefs, including OHFL's opening brief (currently due July 15, 2015), OHFL's intervenor's brief (currently due September 8, 2015), OHFL's reply brief (currently due September 22, 2015), and OHFL's final briefs (currently due October 13, 2015). In addition, Selena C. Smith is OHFL's attorney responsible for compiling the deferred appendix (currently due September 29, 2015). (See the attached Declaration of Selena C. Smith, ¶3 ("Smith Decl."); see also D.C. Cir. Case No. 14-1226, Doc. 1553770 regarding current briefing deadlines.)

5. Selena C. Smith is scheduled to be out of the office on disability and maternity leave from on or about September 8, 2015 through December 18, 2015.

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Ms. Smith will be unavailable to prepare any briefs during this time period. (Smith Decl. ¶4.)

6. Ms. Smith has been an attorney of record in these proceedings beginning with the July 2010 administrative hearing. She played a significant role in the trial of this case. Since July 2010, Ms. Smith has been the attorney responsible for drafting OHFL's briefs before the Board. This included OHFL's cross-exceptions brief, answering briefs, and reply briefs filed with the Board in 2011. (Smith Decl. ¶¶5-6.)

7. Since May 2012, Ms. Smith has been the attorney responsible for drafting OHFL's petitions for review, motions, responses to motions, and briefs filed in this Court (including in these consolidated proceedings, D.C. Cir. Case Nos. 14-1226, 14-1273, and 15-002, and in previous related cases, D.C. Cir. Case Nos. 12-1226, 12-1358, 12-1360.) Ms. Smith continues to be the lead attorney responsible for preparing OHFL's briefs in these consolidated proceedings. (Smith Decl. ¶7.)

8. Although there are other attorneys of record representing OHFL in these consolidated proceedings, no other attorney is as familiar with OHFL's legal arguments, defenses, and case history as Ms. Smith. It is not practicable for another attorney of record to complete OHFL's briefs due before this Court at this stage in the proceedings. (Smith Decl. ¶8.)

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9. Due to the conflict between Ms. Smith's disability/maternity leave and the briefing deadlines set forth in the Court's May 22, 2015 Order, OHFL respectfully requests that the Court extend the briefing deadlines as follows:

Description of Brief:	Proposed Deadline:
Brief for OHFL	November 20, 2015
Brief for Teamsters Union Locals	November 20, 2015
Brief for the NLRB	December 30, 2015
Briefs for Intervenors	January 14, 2016
Reply Brief for OHFL	January 28, 2016
Reply Brief for Teamsters Union Locals	January 28, 2016
Deferred Appendix	February 4, 2016
Final Briefs	February 18, 2016

10. No oral argument has been scheduled yet in these consolidated proceedings. (Smith Decl. ¶9.) Thus, extending the briefing deadlines as proposed will not impact the Court's current oral argument calendar.

11. No party or individual will be prejudiced by an extension of the briefing deadlines in this matter. The primary issues in these consolidated cases regard

contributions by OHFL on behalf of its bargaining unit employees to various Union Trust Funds for pension and health and welfare benefits. The parties dispute whether OHFL lawfully ceased contributions to certain Trust Funds. The parties also dispute whether OHFL lawfully placed bargaining unit employees in comparable Company retirement and medical plans. The potential remedies at stake are primarily financial. While this appeal is pending, OHFL's bargaining unit employees continue to receive medical benefits coverage and retirement benefits. OHFL's bargaining unit employees are not prejudiced by a briefing postponement. Nor will this proposed briefing postponement prejudice the other parties. If any contributions are owed, they are owed to Union Trust Funds – not to the Union or the Board. (Smith Decl. ¶10.)

For all of the above reasons, Oak Harbor Freight Lines respectfully requests that the Court grant this Motion to Extend the Briefing Deadlines.

Respectfully submitted this 29th day of May, 2015.

By: s/Selena C. Smith

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